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Attorneys

DANILO BRACHO V. KENT SCHOOL

ATTORNEY GLENN FORMICA EXPERT REPORT

I have been asked to respond to the expert report and opinions of Attorney Jan Allen Reiner and to offer my expert rebuttal opinions concerning the following:

4. Danilo Bracho past and present ability to obtain permanent resident status/Green Card through investment and family-based programs.

- III. **It is more likely than not that, if he meets program requirements, Danilo would have qualified and will now qualify for permanent residency and a Green Card in the United States under the Immigrant Investor Program. He may also in the future qualify for a Green Card under a family-based program.**

EB-5 Visa

“The INA allots 9,940 immigrant visas each fiscal year for foreign nationals seeking to enter the United States under the EB-5 classification. See INA section 201(d), 8 U.S.C. 1151(d); INA section 203(b)(5), 8 U.S.C. 1153(b)(5). Not less than 3,000 of these visas must be reserved for foreign nationals investing in TEAs. See INA section 203(b)(5)(B), 8 U.S.C. 1153(b)(5)(B).”

<https://www.federalregister.gov/documents/2019/07/24/2019-15000/eb-5-immigrant-investor-program-modernization>.

Mr. Reiner describes the Immigrant Investor program as follows:

- **Immigrant Investors**

The final employment-based immigrant visa category is set aside for immigrant investors. To qualify for immigration as an immigrant investor is a highly complex and restrictive visa category. In order to qualify for immigration as an investor the individual must establish that they have invested or are actively in the process of investing capital in a new commercial enterprise, which will benefit the United States economy and create full time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence , or other immigrants lawfully authorized to be employed in the United States.⁴⁷ The amount of capital that is required to be invested is \$1,000,000, except that amount can be reduced to \$500,000 if the investment is made in a targeted employment area. I have not seen any evidence that Danilo Bracho satisfies these requirements and whether he may in the future is speculative.

There are additional requirements for an individual who qualifies as an immigrant investor to be granted full permanent residence.

INA § 203(b)(5)(A)(i) & (ii); 8 U.S.C. § 153(b)(5)(A)(i) & (ii).
INA § 203(b)(5)(C)(i)&(ii); Targeted employment areas are defined as high unemployment areas or rural areas. A high unemployment area is an area which has experienced high unemployment of at least 150 percent of the national average. A rural area means any area other than an area within a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more. INA § 203(b)(5) B&(C). There is also a possibility of qualifying as an immigrant investor through indirect job creation by investing in a regional center. 8 C.F.R. § 204.6(J). For an individual investment not in a regional center there must be a comprehensive business plan. 8 C.F.R. § 204.6(J)(4)(i)(B). The source of the funds must be owned by the investor and the individual must establish that the funds were acquired directly or indirectly by lawful means. 8 C.F.R. § 204.6(e)(J). The assets to be invested must be totally at risk. 8 C.F.R. § 204.6(J)(2). It must be established that the 10 permanent jobs will be created within two years. 8 C.F.R. § 204.6(J)(4)(i)(b). The permanent residence that is granted in investor cases is a conditional permanent residence. Within 90 days prior to the 2nd anniversary the individual must apply for removal of conditional residence.

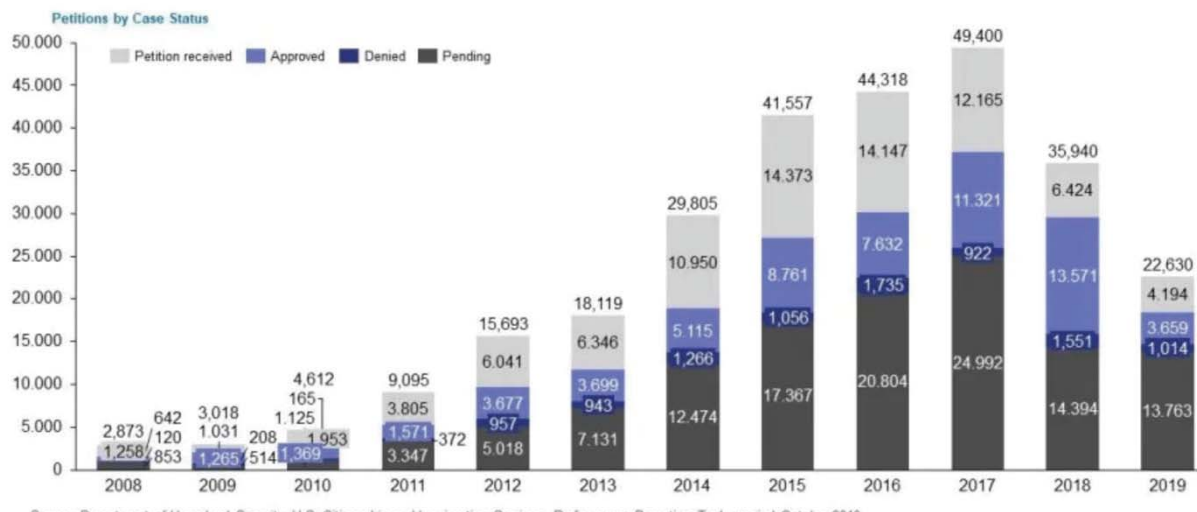
Under 8 C.F.R. § 216.6(c)(i)(iv) , the individual must establish the following in order for the conditional residence to be removed and for the individual to be granted full permanent residence: (a) The CR invested or was actively investing the required capital and it was sustained throughout the two year period of conditional residence; (b) The enterprise was sustained and the individual substantially met the capital investment requirements of the statute; (c) The individual created the IO full time jobs or it can be expected to create the IO full time jobs for qualifying employees within a reasonable time.

Reiner Report at 10-11.

Mr. Reiner's description of the program is out-of-date. In fact, the EB-5 Immigrant Investor Program has been modernized to increase the amount of capital required and to make other changes. See <https://www.uscis.gov/eb-5>. He also may be incorrect that "the source of the funds must be owned by investor." Reiner Report at 11 n. 48. In fact, that issue is on appeal to the D.C. Circuit. *Id.*

But I agree with Mr. Reiner's implied conclusion that if Danilo satisfies the requirements of this program, including any requirements concerning the source of the invested funds, then, more likely than not, he would be able to obtain full permanent residence. More applications are approved than denied.¹¹ Over a ten year span the annual cap of 10,000 EB 5 visas is seldom reached. Assuming Danilo' financial eligibility for an EB-5 visa (using funds already available to him and/or funds acquired as a result of a judgment in this case), it is more likely than not that he would receive this benefit.

I-526 Petitions Peak in 2017, Drop Dramatically



¹¹ While the following charts are provided as a visual aid and numerical summary, the official data for visa issuance is found at: <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2019AnnualReport/FY19AnnualReport-%20TableII.pdf> These reports are mandated by Congress.

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June 15, 2020

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